

**Dissenting Views
of
Reps. John D. Dingell, Henry A. Waxman, Edward J. Markey, Rick Boucher,
Edolphus Towns, Frank Pallone, Jr., Sherrod Brown, Bart Gordon,
Bobby L. Rush, Anna G. Eshoo, Bart Stupak, Eliot L. Engel,
Albert R. Wynn, Ted Strickland, Diana DeGette, Lois Capps,
Michael F. Doyle, Tom Allen, Jim Davis, Jan Schakowsky, Hilda L. Solis,
Jay Inslee, Tammy Baldwin, and Mike Ross
on
H.R. 3893, the “Gasoline for America’s Security Act of 2005”**

We oppose H.R. 3893, the “Gasoline for America’s Security Act of 2005”. The bill will do nothing to lower gasoline and other fuel prices. It will do nothing to deal with the problems found in the aftermath of Hurricanes Katrina and Rita. Despite new regulatory subsidies to a refining industry making record profits, it is unlikely to increase refinery capacity. It includes a panoply of unrelated provisions, mainly designed to reduce public health and environmental protections. And all of this was done through a deeply flawed process that included no legislative hearings and limited time for consideration.

We offered an answer to the awful rise in gasoline prices and the projected increases in home heating oil, natural gas, and propane prices this winter, as well as dealing with refinery problems identified in the wake of hurricanes. Unfortunately our alternative was defeated on a straight party-line vote.

The bill will do nothing to deal with high gasoline and other fuel prices.

The only provision in the bill which even purports to deal with high gasoline prices is totally ineffective and represents a rollback of some of the existing authorities of the Federal Trade Commission (FTC). The so-called price gouging provision appears directed toward small gas station owners. According to a recent analysis of price increases at the pump published in the *Washington Post*, however, margins at gas stations increased by less than one cent per gallon, less than a 5 percent increase.

The major increase in prices at the pump were at the refinery level, where gasoline prices have increased by 71 cents, or 255 percent. While there is some question over whether the bill’s provisions even cover these refineries, the bill’s penalty provisions ensure that its provisions are meaningless.

In the first known case of a legislative provision limiting the court’s ability to calculate civil penalties for a violation of the FTC Act, the bill limits penalties to any person for price gouging to \$11,000 per day. So even if a company such as Exxon Mobil, with profits in the last quarter of \$7.62 billion (or more than \$84 million per day), the maximum find would be \$11,000 per day, less than one-hundredth of one percent of profits.

The provision lacks real enforcement authority since it does not allow for state attorneys general to enforce the Federal law. Nor does it make market manipulation a cause of action. Finally, the provision fails to cover other fuels. The Energy Information Administration (EIA) has forecast natural gas prices to rise by 71 percent in the Midwest but natural gas, along with home heating oil and propane, are not even covered under the proposal.

Despite new subsidies to a refining industry making record profits, it is unlikely to increase refinery capacity.

The bill resurrects some old proposals that were discarded in the recently passed Energy Policy Act of 2005, adds some new subsidies to oil companies, and repeals some provisions of the recently passed Act. All of the proposals are based upon an unproven and flawed assumption that environmental laws have thwarted the building of refineries.

The bill's refinery provisions provide a new fast track authority for permitting refineries that removes court decisions from State or local district courts to the Federal Court of Appeals in the District of Columbia. The standard for judicial review appears to permit the overturning of State or Federal actions to block refinery siting, but does not appear to provide for the overturning of actions that permit refinery siting. In addition, the bill provides a new "regulatory insurance subsidy" that could put taxpayers on the hook for unlimited damages if a refinery is stalled in litigation or must meet new regulatory standards. The bill would give away Federal lands and closed military bases to oil companies to build refineries, without allowing any public input. The bill even has a provision that would require litigants, such as States and localities, to pay for the oil company's litigation costs should the company prevail in a lawsuit, but would not provide for the company to pay the opponents of a refinery its costs even if they successfully prove that the refinery siting violates Federal law.

While the Committee has never held hearings on these proposals, or conducted any serious investigations into the reasons the oil industry has closed more than 30 refineries in the past three decades, most evidence, including studies by the Government Accountability Office (GAO), suggests that the reasons relate to economic considerations, not environmental laws. In the only case of a company seeking a new refinery (in Arizona), a permit was granted in 1992, but the company chose not to build on the site for financial reasons. After taking no action for nearly 10 years, the company submitted a new permit application and then decided to move to a new site. After submitting its last permit application in July of 2004, the company was awarded a permit by the Environmental Protection Agency (EPA) in less than a year.

It appears that a more likely answer, found both by GAO and other investigations, is that refinery margins were traditionally low, and by removing capacity from the market, margins could grow. We know that refinery margins are now at an all-time high, and new regulatory subsidies and special treatment for this industry are at best a dubious policy.

We are also particularly concerned by a provision of the bill that would allow the President to designate closed military sites for use as a refinery. The provision provides no opportunity for public input into the decision. At a minimum, it could preclude a local

community from making decisions to transform the site into an economically useful area for at least an additional two years.

On September 14, 2005, Ranking Member Dingell sent a letter to EPA about how the provisions of the Energy Policy Act of 2005 to coordinate permitting of refineries were working, but no response was provided. We may never find out, because the bill even repeals these provisions. He also sent a letter on September 15, 2005, to Secretary of Energy Bodman requesting information on the status of the 30 refineries that have been closed over the past 10 years, as well as an analysis of which closed military bases, if any, were suitable for a refinery. This letter too remains unanswered.

In short, the bill heaps large new subsidies on industry in the form of regulatory relief without any record that these provisions will work, and without any record on whether the recently enacted law already solves perceived problems.

The bill includes a panoply of unrelated provisions, mainly designed to reduce environmental protection.

The bill inappropriately uses the catastrophes of Hurricanes Katrina and Rita to enact changes to environmental and other laws that are totally unrelated to either high fuel prices or damages from the hurricanes.

Among the provisions of the bill is a codification of the Administration's controversial New Source Review regulations, with an expansion to cover all industries, not just energy industries. Another provision known as "bump-up" relates to delays in compliance under the Clean Air Act. Other provisions change the regulation over natural gas offshore gathering pipelines. Another provision arbitrarily establishes a limit on six types of gasoline and diesel.

Regardless of our views of the merits of any of these provisions, none has been subjected to serious consideration in hearings in this committee. Repeated questions of counsel on these provisions indicated a lack of full understanding of the implications of these provisions, or even in some cases, the rationale.

The bill is a product of a deeply-flawed process that included no legislative hearings and limited time for consideration.

Were this emergency legislation, such as near term help for the hurricane victims, we would be ready to act quickly. This bill, however, is not such a bill, a fact conceded by the chairman when he stated during debate that this legislation "is also a generic energy bill." No matter what you label it, the impacts on such matters as energy supplies and refinery construction would likely be a decade or more away.

Unfortunately, the bill was considered under a lightning fast process that did not include a single legislative hearing. The bill was unveiled on Friday night at 10:00 p.m., leaving Members two business days to evaluate it, and formulate amendments, prior to its consideration on Wednesday. Ranking Member Dingell along with Subcommittee Ranking Members Boucher and Solis requested legislative hearings on the matter, but the request was ignored.

At the Wednesday markup Members were informed that the markup would consist of just a single day. The markup began at 8:00 a.m. and continued until midnight. During the course of the markup Members asked questions concerning the provisions of the bill that could not be answered.

If for no other reason, this bill should be rejected for its utter lack of a legislative record.

Despite the lack of time for consideration of the bill, we offered a thoughtful alternative that addressed the problems of high fuel prices and refinery problems identified in the aftermath of the hurricanes.

The Democratic substitute for the first time gave explicit authority to the FTC to stop price gouging, not just for gasoline and diesel, but for natural gas, home heating oil, and propane. The substitute provided for enhanced civil penalties equal to three times the amount of unjust profits gained or up to \$3 million. Penalties would be put toward the Low-Income Home Energy Assistance Program. Market manipulation would be explicitly outlawed. State attorneys general would be empowered to enforce the Federal law. The provision explicitly allowed State price gouging laws to continue in effect. In addition, the substitute called for the FTC to set rules for market transparency, and to protect the public from anti-competitive behavior. The Secretary of Energy would be directed to review preparedness of the oil industry for natural disasters, terrorist attacks, and other supply disruptions.

The Democratic substitute also responded to a real problem revealed by the hurricanes. The Strategic Petroleum Reserve (SPR), designed to protect us from an energy supply disruption, was of limited use due to the damage to refineries to process the crude oil. The substitute would establish a Strategic Refinery Reserve (SRR) patterned after the SPR. The Secretary of Energy would be directed to establish the SRR either by building new refineries or reopening previously closed facilities. The SRR would be designed to produce 5 percent of the demand for gasoline.

During normal times the SRR would operate to meet the needs of the Federal fleet, including the Department of Defense. During supply disruptions the refined products would be made available for public consumption. The SRR would ensure that Federal fleet and military needs would be met at all times; ramping up to full production would be eased by keeping the refineries operating at a reduced level at all times; and production for the Federal uses would free up additional supply, decreasing price pressures.

The Democratic substitute was defeated on a straight party-line vote.

Conclusion

H.R. 3893 should be defeated. It is the product of a flawed process, will not alleviate high prices at the pump or heating costs in the winter, and will not provide the reserve refining capacity that the hurricanes showed is badly needed. It represents an attempt by the bill's proponents to use the tragedy of the hurricanes to rush through an agenda unrelated to the problems those hurricanes posed and implicating key public health and environmental protections. The Democratic alternative would provide relief to consumers and protection against future supply disruptions, but it fell victim to the Republican agenda.